91-2013

Supreme Court, U.S.
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No. 91-

IN THE

Supreme Court of the United States

October Term, 1991

SANDRA L. SANTMYER,

Petitioner

v.

JUDY A. SANTMYER,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF PETITIONER

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QUESTION PRESENTED FOR REVIEW

Has the United States Court of Appeals for the Eleventh Circuit rendered a decision in conflict with a decision of the Court or of other federal circuit courts of appeals by holding that the written designation requirement of the Servicemen's Group Life Insurance Act(SGLIA), 38 U.S.C.A. § 770(a)[1], is inapplicable if a court finds that the deceased serviceman's "intent" was otherwise than he stated in his written designation?

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[1] The United States Code Annotated (West) renumbered § 770 to § 1970 in its 1991 edition. Pub. L. 102-83, §§ 4(b) (1), 5(a), (c) (1), Aug. 6, 1991, 105 Stat. 404, 406. 38 U.S.C.A. at p. 738. App. A. The former § 770(a) is not available to us, because law librarians discarded the U.S.C.A. volume when West distributed the new, renumbered volume. The United States Code (U.S.C.) is out of date. Therefore, we have attached a copy of 38 U.S.C.S. § 770(a) (Law.Co-op.) App. A.

Former § 770 was redesignated § 1970 "by replacing the first digit of the section number with the number of the chapter containing that section". Act of August 6, 1991, Pub.L.No. 102-83, 1991 U.S. Code Congressional and Administrative News (105 Stat) 406. Inasmuch as the SGLIA is within Chapter 19, the first 7 of §770 was replaced by 19, thus § 1970.

LIST OF ALL PARTIES

1. Petitioner is Sandra L. Santmyer who was the designated SGLI beneficiary of the deceased serviceman, Richard D. Santmyer.

2. Respondent is Judy A. Santmyer, Richard's second wife, who prevailed in the lower courts as the designated beneficiary.

3. The Prudential Insurance Company of America is not a party, although listed in the case heading by the lower courts. Prudential filed a stakeholder's motion to deposit the Servicemen's Group Life Insurance (SGLI) proceeds in the trial court's registry in return for dismissal. The parties did not object, and Prudential was dismissed. It is no longer a party and has no interest in the outcome of the case.

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OPINIONS AND JUDGMENTS BELOW

The subject opinion of the Eleventh Circuit, *Judy A. Santmyer v. The Prudential Insurance Company of America and Sandra L. Santmyer,* Case No. 91-3436, Opn. March 17, 1992, *reh'g denied,* May 4, 1992, is an unreported opinion, App. B, that affirmed the district court's published opinion, *Santmyer v. Prudential Ins. Co. of America,* 761 F. Supp. 114 (M.D. Fla. 1991), App. C.

JURISDICTION

The jurisdiction of the Supreme Court is invoked in this matter pursuant to 28 U.S.C.A. §1254(1). Petitioner seeks review of the order of the United States Court of Appeals for the Eleventh Circuit, dated March 17, 1992, *Judy A. Santmyer v. The Prudential Insurance Company of America and Sandra L. Santmyer,* unpublished opinion, App. B. Petition for rehearing en banc was denied on May 4, 1992, App. B.

APPLICABLE STATUTE

The Servicemen's Group Life Insurance Act, Pub.L. 89-214, § 1(a), Sept. 29, 1965, 79 Stat. 883, § 770, and amended Pub.L. 91-291, § 5, June 25, 1970, 84 Stat. 330; Pub.L. 93-289, § 7, May 24, 1974, 88 Stat. 169; Pub.L. 97-295, § 4(31), Oct. 12, 1982, 96 Stat. 1307; Pub.L. 97-306, Title IV, § 401(a), Oct. 14, 1982, 96 Stat. 1442; Pub.L. 99-576, Title VII, § 701(40), October 28, 1986, 100 Stat. 3294; Pub.L. 102-54, § 149(b)(17), June 13, 1991, 105 Stat. 284; renumbered and amended Pub.L. 102-83, §§ 4(b)(1),5(a),(c)(1), Aug. 6, 1991, 105 Stat. 404, 406, codified as 38 U.S.C.A. § 1970, formerly § 770:

(a) Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefore, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former

member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance...

STATEMENT OF THE CASE

In December 1984, Lt. (jg) Richard D. Santmyer, United States Coast Guard Reserve, designated his wife, Petitioner Sandra L. Santmyer, as his SGLI beneficiary; he did so by delivering VA Form 29-8286 to the Coast Guard; he never changed or amended that designation by a writing, and no written change was ever received by the Coast Guard; he died during 1990. Unpublished opinion at 1-3, App. B; district court opinion, *Santmyer,* 761 F. Supp. at 116-17, App. C. Richard and Sandra were divorced, and Richard married in August 1985. 1978, 564 S.W.2d 185.

When Richard died in 1990 the Coast Guard notified Sandra that she was the beneficiary, and provided her with the necessary claim form, whereupon Sandra filed her claim. The Office of Servicemen's Group Life Insurance (OSGLI) wrote to her that it would not pay her because Judy must have ample time to file suit. App. D.

Judy sued Prudential and Sandra, alleging that Sandra was designated beneficiary but that Richard had "intended that JUDY ... be the designated beneficiary of the SGLI benefits." By her answer, Sandra admitted that she was the designated beneficiary and moved for judgment on the pleadings, alternatively for summary judgment. Sandra stipulated in connection with her motions that Judy would testify that Richard had stated his intention in Judy's favor. *Santmyer,* 761 F. Supp. at 116. But Sandra did not stipulate that such was or is relevant.

After receiving Sandra's motions, Judy filed her cross motion for summary judgment, attaching the affidavits of Coast Guard clerks, a civilian co-employee with Richard during his life, and her own affidavit, the upshot of all of this post death testimony being that, although he never designated Judy in a writing that was received by his service branch, SGLIA *ante* at 2, Richard

intended to designate Judy and was led to believe that he had done so by completing a form that the Coast Guard utilizes for its members to designate matters other than life insurance beneficiaries, CG 4113 (Rev. 9-83). App. E.

As stated by the Eleventh Circuit and the district court, Richard executed a new 4113 Record of Emergency Data (RED) in 1988. Whereas the original RED showed that Sandra was designated to receive Richard's unpaid pay and allowances, among other things, Richard designated Judy to receive pay and allowances; when Richard was transferred to another Coast Guard unit in 1989, he reviewed the RED and "confirmed that he wanted Judy to receive his SGLI benefits. The clerk stated that Judy was already designated to receive those benefits on the RED form." Opinion at 2, App. B. This same scenario is recited in the district court's published opinion. 761 F. Supp. at 116, App. C.

Further, the post death and suit filing affidavits suggested that, in 1990, Richard told the administrative officer of his reserve unit that he "wanted to make sure" that Judy would receive his SGLI benefits; apparently, the officer did not respond but, two months later, upon hearing that Richard was in the hospital, she inquired of a clerk or someone in charge at a Coast Guard headquarters unit, whereupon a chief petty officer informed her that "a current RED form designated Judy as the beneficiary of Richard's SGLI policy. Richard died soon thereafter." Opinion at 2-3, App. B; 761 F. Supp. at 116, App. C.

Although Sandra is careful in avoiding any implication that post death affidavits are relevant, it is a fact that there is no evidence of Richard's "intent" at the time of his death. Moreover, there is no evidence bearing upon the likewise irrelevant question whether Richard ever really "intended" that Judy receive the SGLI proceeds.

The RED
CG-4113(Rev. 9-83)

Richard completed the first side of the form, listing his

current wife Judy; his two children (by Sandra); his father and mother; his brother; and he designated Judy to receive his unpaid pay and allowances and to receive allotment of pay if he were missing or unable to transmit funds. App. E.

On the reverse side of the form, Richard certified correct the various items that he had indicated on the first page, and he certified that his $50,000 SGLI policy was in force. *Id.* Three inches above his certifications is the instruction or warning:

> The record of Emergency Data (CG Form 4113) *does not* designate SGLI beneficiaries. Such designations are made by executing VA Form 29-8286. Members who do not have a completed VA Form 29-8286 in their record or who have completed it as indicated "By Law" thereon will, upon their death, have their SGLI proceeds paid under the provision of law in the following order:. . .

App. E (Coast Guard emphasis).

Richard did not write upon the RED that he eliminated Sandra as his beneficiary; he did not designate Judy; the Coast Guard has never received any writing that designates Judy and that eliminates Sandra; to this day, Sandra remains the in writing designated beneficiary in Coast Guard records. However, the Eleventh Circuit wrote that "Richard and the Coast Guard clerk who filled out the form believed that it effectively designated Judy as the beneficiary of the SGLI policy." Opinion at 2, App. B.

The SGLI Election
VA Form 29-8286

Richard designated Sandra to receive his SGLI proceeds and he listed the parties' two children, Traci and Scott, as contingent beneficiaries. App. F. The form is entitled SERVICEMEN'S GROUP LIFE INSURANCE ELECTION, and includes Richard's statement: "I UNDERSTAND that this form cancels any prior beneficiary or payment instructions and that unless I have named the beneficiary(ies) above, my insurance will be paid

under the 'Provisions of the Law' as explained on the reverse of this form." *Id.* Richard's designation of Sandra was "WITNESSED AND RECEIVED BY" the officer in charge of his unit on December 4, 1984. *Id.*

The lower courts' rejection of 38 U.S.C.A. §770(a)

The district court judge rejected §770(a), substituting an "intent communication" criterion: The intent to change beneficiaries [sic] was *communicated* to the Coast Guard"; the judge then described the contents of the various post death affidavits that were executed by Coast Guard personnel and a friend. *Santmyer,* 761 F. Supp. at 116, App. C. (emphasis supplied). The Eleventh Circuit adopted the district's court's reasoning, that Richard "satisfied the applicable requirements for changing his SGLI beneficiary. When Richard designated Judy as the beneficiary of his pay and allowances on the RED form, Coast Guard officials understood that he was designating her to receive his SGLI benefits." Opinion at 4-5, App. B.

The Eleventh Circuit stated that it must give "paramount consideration" to Richard's intent in designating a beneficiary, so long as the "statutory requirements are met." Opinion at 5, App. B. The court held that the RED form was a written change of beneficiary that was received by the service branch prior to the date of death: "A change of beneficiary is effective as long as it is in writing, signed by the insured, and received by the service branch prior to death." *Id.* at 5-6. The record does not support this statement, the Eleventh Circuit equating post death affidavit testimony with a "writing, signed by the insured, and received by the service branch prior to death."

Concluding, the court wrote: "The Coast Guard received the RED form signed by Richard before his death, and it knew that the form was intended to designate Judy as the sole beneficiary of Richard's SGLI policy. Accordingly, Judy is entitled to the benefits of that policy." *Id.* at 6. Thus, although Richard did not designate *anyone* on the RED, and did not eliminate Sandra as his sole beneficiary, both lower courts held

and wrote that he did *eliminate* Sandra and *designated* Judy. In order words, the lower courts ruled that Richard effected these two actions - eliminating and designating - whereas he did not do so at all.

ARGUMENT

It is of great importance that the Court not only resolve the conflict that the subject decisions create, but enforce Congress' mandate that courts are precluded from conducting post death intent finding exercises, else the Court might well expect that, despite written designations, the judiciary will be called upon to resolve what a judge perceives, in a given case, as to be an opportunity to reverse the serviceman's intent as shown by his designation of record. This case presents a problem that goes beyond the dispute that Judy has created. If courts are allowed to engage in the activity demonstrated in this case, not only will beneficiaries' SGLI benefits be diluted by attorney fees and costs, the judiciary will have effectively rewritten the SGLIA.

It must be conceded that Congress has created an insurance system that is not unlike private insurance: the carrier *must* pay the designated beneficiary; the belief of the insurance agent or a clerk is not important: "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." *Wissner v. Wissner,* 338 U.S. 655, 658 (1950); *Ridgway v. Ridgway,* 454 U.S. 46, 55 (1981) (citing and quoting *Wissner*).

The OSGLI violated the SGLIA when it wrote to Sandra that the SGLI benefits would not be paid until after Judy had had ample time to sue. *Ante* at 3. Congress did not give the Administrator of Veterans' Affairs[2] the authority to decide that a divorced serviceman did not intend to designate his first wife as his SGLI beneficiary. Moreover, Congress' "statutory plan," *Ridgway,* 454 U.S. at 53, is not subject to a judicial rewrite. In other words, there is no basis for reading the SGLIA in such a fashion as to believe that courts have an authority that the Administrator clearly does not have - no mystical alchemy occurs by reason of filing a lawsuit and post death affidavits about the serviceman's "intent."

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[2] Under the 1991 amendments, *supra* n 1, "Administrator" was eliminated, replaced by "Secretary." Act of August 6, 1991, Pub.L. 102-83, 1991 U.S. Code Congressional and Administrative News (105 Stat.) 378-79. *See* explanation at 38 U.S.C.A. p. 24: "1991 Amendments..."

The lower courts' written opinions create a special problem that we respectfully submit must be eliminated by the Supreme Court, particularly in its supervisory role: the district and circuit courts have written "law" that not only conflicts with the Court's and other circuits' decisions, they have written their own "law" in a fashion that creates the most serious question about judicial power. Each lower court obviously recognized that Richard had designated Sandra in his writing that was received by the Coast Guard, and the judges understood that he did not designate Judy. Nevertheless each court decided that there existed a *writing designating* Judy, *ante* at 8, when, in fact, there was not. If such reasoning is allowed to stand, not only must judicial integrity be questioned, the courts should expect future litigation in the same mold as the case at bench.

The circuit courts of appeals, until this case, have adhered to the Court's *Wissner* and *Ridgway* decisions, as well as to §770(a) itself. *Prudential Ins. Co. v. Smith,* 762 F.2d 476 (5th Cir. 1985); *Coomer v. United States,* 471 F.2d 1 (5th Cir. 1973); *Prudential Ins. Co. of America v. King,* 453 F.2d 925 (8th Cir. 1971); *Stribling v. United States,* 419 F.2d 1350 (8th Cir. 1969).

Ridgway presents the congressional mandate in clear and unmistakable terms. Sergeant Ridgway's divorce decree contained the state court's order that he maintain in force his life insurance policies for the benefit of his and his former wife's three children; despite this directive, he designated "by law" after he was remarried to his second wife, such meaning that second wife would receive the policy benefits[3]; the Maine trial court held that second wife was entitled to the proceeds under the SGLIA; however, the Supreme Judicial Court of Maine, sympathetic to the first wife who was saddled with raising the decedent's three children, directed that the proceeds be paid to her; second wife appealed and the Court ruled in her favor, because "[t]he present case, we feel, is controlled by *Wissner.*" *Ridgway,* 454 U.S. at 56. Quoting *Wissner:* "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary

[3] 38 U.S.C.A. § 1970(a), formerly § 770(a), App. A.

and no other." *Ridgway,* 454 U.S. at 55.

While the *Ridgway* Court discussed the Supremacy Clause and the Court's quickness to prevent the "frustration and erosion of the congressional policy embodied in the federal rights," *Id.* at 54, its decision is based upon the unmistakable language of the SGLIA. In the course of his opinion for the Court, Justice Blackmun quoted the regulations that the Administrator of Veterans' Affairs[4] has promulgated pursuant to the SGLIA:

> These provide that the insured "may designate any person, firm, corporation or legal entity" as a policy beneficiary, and any such "designation or change of beneficiary . . . will take effect only if it is in writing, signed by the insured and received [by the appropriate office] prior to the death of the insured." 38 CFR §§ 9.16(a) and (d) (1980). A change of beneficiary "may be made at any time and without the knowledge or consent of the previous beneficiary." § 9.16(e). And "[n]o change or cancellation of beneficiary . . . in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office." §9.16(f).

Id. at 53.

Thus, the Court made it clear beyond question that the judiciary is without authority to embark upon intent finding exercises, Congress having made it abundantly clear that the written designation received by the service branch must be honored and that the serviceman's intention will not be frustrated by a judge's personal idea of what the law should be (or what is right and wrong in a particular case).

Like *Ridgway, Wissner* is particularly compelling because the Court held that the serviceman's parents, having been designated in a writing received by his service branch, were entitled to the insurance proceeds rather than his wife who was not designated. *Wissner,* 338 U.S. 655. In sum, the *Ridgway*

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[4] Now, "Secretary of Veterans Affairs." 38 U.S.C.A. §303.

serviceman's three children lost, and the wife lost in *Wissner,* because the courts must follow the congressional mandate. The case at bench presents no greater problem for the judiciary than did *Wissner* and *Ridgway:* read the statute and apply it, because the serviceman's intent as expressed by his written designation will not be frustrated.

The Fifth Circuit affirmed a trial court ruling in favor of the serviceman's second wife, because "Sergeant Smith regarded Irene as his lawful spouse and intended by the documents executed to make her his life insurance beneficiary." *Prudential Ins. Co. of America v. Smith,* 762 F.2d at 479. The *Smith* court was not confronted with the "RED form" matter that Judy and the trial and appellate courts raised in the instant case. Rather, Sergeant Smith had executed two VA 29-8286 forms, so the last one that he executed and delivered to his service branch was deemed the only relevant document. The Fifth Circuit's holding does demonstrate, however, the legal point that "intent" is found only in the document executed.

Previously, the Fifth Circuit had held that the serviceman's written designation of his father, received by his service branch, was effective irrespective of the fact that Petty Officer Coomer had his service record in his possession when he died; the Navy had received his VA 29-8286 and maintained it until Coomer's change of duty orders were cut, at which point he was detailed to carry his sealed personnel file with him to his next duty station. *Coomer,* 471 F.2d 1. The trial court had ruled against the petty officer's father upon the theory that the service record was not in the Navy's possession at time of death. But the court wrote:

> We hold that this conclusion is an 'unwarranted interpretation of the statute. There is no dispute here concerning the presence of a writing; the only question is the meaning of the phrase "received in the uniformed services." In the definition section of this statute Congress stated that " 'uniformed services' means the Army, Navy, Air Force, Marine Corps, Coast Guard...." 38 U.S.C. § 765(6). There is nothing in either the legislative history or subsequent court decision which would even remotely indicate that

> Congress, having defined "uniformed services," intended to further restrict the definition and equate receipt by the particular service branch with actual presence of the beneficiary designation form in the serviceman's records. Such an interpretation runs contrary to the specific language of the statute which provides that the insured may choose his own beneficiary providing he completes the requisite formalities. Certainly Congress could not have intended to let that choice become nullified when, through no fault of the serviceman, his records are lost, destroyed, stolen or misplaced.

Coomer, 471 F.2d at 3 (footnote and citation omitted).

In other words, the courts are limited to the plain language of the SGLIA and are prohibited from reading it any differently than the service branch or Administrator (Secretary) is required to read it.

The Eighth Circuit has likewise limited its trial courts to the statute's wording. In 1967 the Army promulgated a regulation directing that Form 29-8286 be utilized to make the written beneficiary designations; the serviceman, a minor, utilized the old superseded Form 3054 to designate his friends as beneficiaries, so his mother, Aleene King (who would have been entitled by law to the proceeds in the absence of a written designation, § 770(a), App. B), sought the proceeds and prevailed in the trial court; the Eighth Circuit reversed in favor of the written designees, because the statute merely requires a writing that is received by the service branch prior to death. *Prudential Ins. Co. of America v. King,* 453 F.2d at 929.

In another Eighth Circuit decision, Private Stribling sent to his mother the requisite form, wherein he designated her to receive the insurance proceeds; the difficulty for her was that the private's service branch had not received the designation, so his wife received the proceeds. *Stribling v. United States,* 419 F.2d 1350. The court rejected the mother's argument that a liberal policy favoring beneficiary changes had developed over the years in a long line of decisions:

> It follows, then, that Private Stribling's efforts to change the beneficiary of his [SGLI] policy and to designate appellant fell short of complying with 38 U.S.C. § 770(a) - the handwritten form DA 3054 was not received in the uniformed services. Therefore, the decision of the district court must be and is affirmed.

Id. at 1355.

Stribling was, if anything, a better candidate for liberal application of the statute so as to effectuate "actual intent" than the case at bar. For, in addition to sending his mother the completed Form 3054 (predecessor form to the 29-8286, *King,* 453 F.2d at 926), Private Stribling sent his mother a letter evidencing his intention *and* sent her *in his own handwriting* the form 3054 whereby he clearly manifested his intention to change his designation to her. The decision does not give a clue as to why Private Stribling had changed his mind and decided to eliminate his wife and name his mother, but it is not important. The proceeds belong to the named beneficiary in a writing that is received by the service branch prior to the date of death, and to no other. *Wissner,* 338 U.S. at 55.

Santmyer conflicts

In its clear and unmistakable departure from the statute and binding precedent here and the precedent of two other circuits, the Eleventh Circuit has held that the SGLI proceeds belong to none other than the person designated in writing in the appropriate form and received by the service branch. The Eleventh Circuit has refused to abide by the Court's mandate that the proceeds belong to the named beneficiary and no other.

CONCLUSION

A writ of certiorari to the Eleventh Circuit should be issued.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to Rule 28.5(a) I have caused 40 copies of this petition to be deposited in the United States Mail, addressed to the Clerk of the United States Supreme Court, First and Maryland Avenue, N.E., Washington, D.C. 20543, and three copies of the foregoing were furnished by hand delivery to Judy A. Santmyer's attorneys, Richard M. Sebek and Bonita L. Kneeland of Fowler White Gillen Boggs Villareal & Banker, P.A., 501 East Kennedy Blvd., Tampa, FL 33602, this 15 day of June, 1992.

_____

John R. Bush

Subscribed and sworn to before me
this 15 day of June, 1992.

_____

NOTARY PUBLIC,
State of Florida at large.

My Commission Expires:

APPENDIX

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APPENDIX A

UNITED STATES CODE ANNOTATED

TITLE 38

Veterans' Benefits
§§ 1 to 3000

Official Revision and Codification
of the Laws Relating to Veterans' Benefits
Under Arrangement of Official Code of
the Laws of the United States
with
Annotations from Federal and State Courts

ST. PAUL, MINN.
WEST PUBLISHING CO.

1970 Act. Amendment by Pub.L. 91-291 effective June 25, 1970, see section 14(a) of Pub.L. 91-291, set out as a note under section 1317 of this title.

LIBRARY REFERENCES

American Digest System

War risk insurance; actions on policies; amount of recovery, see Armed Services 79(46).

Encyclopedias

Military insurance; actions; judgment and relief, see C.J.S. Armed Services § 247.

WESTLAW ELECTRONIC RESEARCH

Armed services cases: 34k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1970. Beneficiaries; payment of Insurance

(a) Any amount of insurance under this subchapter in force on any member or former member on the date of the insured's

death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of the insured's death.

(b) If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the member or former member, or if payment to such person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if such person had predeceased the member or former member, and any such payment shall be a bar to recovery by any other person.

(c) If, within two years after the death of the member or former member, no claim for payment has been filed by any person entitled under the order of precedence set forth in this

section, and neither the Secretary nor the administrative office established by the insurance company or companies pursuant to section 1966(b) of this title has received any notice that any such claim will be made, payment may be made to a claimant as may in the judgment of the Secretary be equitably entitled thereto, and such payment shall be a bar to recovery by any other person.

(d) The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no such election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six equal monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six equal monthly installments.

(e) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with the member's uniformed service under prior provisions of law will be effective with respect to the increased insurance authorized under the Veterans' Insurance Act of 1974 and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance heretofore in effect.

(f) Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(g) Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 1969(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq. [26 U.S.C.A. § 6331 et seq.]) (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

(h) Insurance payable under this subchapter may not be paid in any amount to the extent that such amount would escheat to a State. Payment of insurance under this subchapter may not be made to the estate of the insured or the estate of any beneficiary of the insured unless it is affirmatively shown that any amount to be paid will not escheat to a State. Any amount to be paid under this subchapter shall be reduced to the extent necessary to comply with this subsection.

(Added Pub.L. 89-214, § 1(a), Sept. 29, 1965, 79 Stat. 883, § 770, and amended Pub.L. 91-291, § 5, June 25, 1970, 84 Stat. 330; Pub.L. 93-289, § 7, May 24, 1974, 88 Stat. 169; Pub.L. 97-295, § 4(31), Oct. 12, 1982, 96 Stat. 1307; Pub.L. 97-306, Title IV, § 401(a), Oct. 14, 1982, 96 Stat. 1442; Pub.L. 99-576, Title VII, § 701(40), Oct. 28, 1986, 100 Stat. 3294; Pub.L. 102-54, § 149(b)(17), June 13, 1991, 105 Stat. 284; renumbered and amended Pub.L. 102-83, §§ 4(b)(1), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404, 406.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1965 Act. House Report No. 1003, see 1965 U.S. Code Cong. and Adm. News, p. 3232.

1970 Act. Senate Report No. 91-398, see 1970 U.S. Code Cong. and Adm. News, p. 3317.

1974 Act. Senate Report No. 93-723, see 1974 U.S. Code Cong. and Adm. News, p. 3117.

1982 Acts. House Report No. 97-388, see 1982 U.S. Code Cong. and Adm. News, p. 2598.

Senate Report No. 97-550, see 1982 U.S. Code Cong. and Adm. News, p. 2877.

1986 Act. Senate Report No. 99-444 and Explanatory Statement, see 1986 U.S. Code Cong. and Adm. News, p. 5468.

1991 Act. Joint Explanatory Statement, see 1991 U.S. Code Cong. and Adm. News, p. 128.

Reference in Text

Veterans' Insurance Act of 1974, referred to in subsec. (e),

is Pub.L. 93-289, May 24, 1974, 88 Stat. 165, as amended, which enacted sections 1977, 1978, and 1979 of this title, section 707 of Title 37, Pay and Allowances of the Uniformed Services, amended sections 1923, 1965, 1967, 1968, 1969, 1970, 1971, and 1974 of this title, and enacted provisions set out as notes under sections 1923, 1965, 1967, and 1968 of this section 707 of Title 37. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 101 of this title and Tables.

Subchapter D of chapter 64 of the Internal Revenue Code of 1986, referred to in subsec. (g)(2), is subchapter D (section 6331 et seq.) of chapter 64 of Title 26, Internal Revenue Code.

Amendments

1991 Amendment. Subsec. (c). Pub.L. 102-83, § 4(b)(1), substituted "Secretary" for "Administrator" in two places.

Pub.L. 102-83, § 5(c)(1), substituted "1966(b)" for "766(b)".

Subsec. (g)(1). Pub.L. 102-83, § 5(c)(1), substituted "1969 (a)" for "769(a)".

Subsec. (g)(2). Pub.L. 102-54 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1986 Amendments. Subsec. (a). Pub.L. 99-576, § 701(40)(A), substituted "date of the insured's death" for "date of his death" in two places, and "member at the time of the insured's death" for "member at the time of his death".

Subsec. (e). Pub.L. 99-576, § 701(40)(B), substituted "with the member's uniformed service" for "with his uniformed service".

1982 Amendments. Subsec. (c). Pub.L. 97-306, § 401(a)(1), struck out provision that if, within four years after the death of the member or former member, payment had not been made pursuant to this section and no claim for payment by any person entitle under this section was pending, the amount payable would escheat to the credit of the revolving fund referred to in section 769(d) of this title.

Subsec. (g). Pub.L. 97-295, added "(26 U.S.C. 6331 et seq.)" after "Code of 1954".

Subsec. (h). Pub.L. 97-306, § 401(a)(2), added subsec. (h).

1974 Amendment. Subsec. (a). Pub.L. 93-289, § 7(1), included in clause First writings received in the administrative office established under § 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's Group Life Insurance, or if insured under Veterans' Group Life Insurance.

Subsec. (e). Pub.L. 93-289, § 7(2), substituted "the Veterans' Insurance Act of 1974" for "this amendatory Act".

Subsec. (f). Pub.L. 93-289, § 7(3), included payment of benefits under Veterans' Group Life Insurance.

Subsec. (g). Pub.L. 93-289, § 7(3), included payment of benefits under Veterans' Group Life Insurance.

1970 Amendment. Subsecs. (e) to (g). Pub.L. 91-291 added subsecs. (e) to (g).

Effective Dates

1982 Act. Section 401(b) of Pub.L. 97-306 provided that: "The amendments made by subsection (a) [adding subsec. (h) and amending subsec. (c) of this section] shall take effect on October 1, 1982."

1970 Act. Amendment by Pub.L. 91-291 effective June 25, 1970, see section 14(a) of Pub.L. 91-291, set out as a note under section 1317 of this title.

§ 770. Beneficiaries; payment of insurance

(a) Any amount of insurance under this subchapter [38 USCS §§ 765 et seq.] in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title [38 USCS § 766(b)] if separated or released from service, or if assigned to the Retired Reserve,

and insured under Servicemen's Group Life Insurance, or if insured under Veterans' Group Life Insurance;

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"The Veterans' Insurance Act of 1974", referred to in subsec. (e), is Act May 24, 1974, P. L. 93-289, 88 Stat. 165. For full classification of this Act, consult USCS Tables volumes.

Amendments:
1970. Act June 25, 1970 (effective 6/25/70, as provided by § 14(a) of such Act), added subsecs. (e)-(g).

1974. Act May 24, 1974, in subsec. (a), substituted "First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's Group Life Insurance, or if insured under Veterans' Group Life Insurance;" for "First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received in the uniformed services prior to such death;"; in subsec. (e), substituted "the Veterans' Insurance Act of 1974" for "this amendatory Act"; in subsecs. (f) and (g), inserted "or Veterans' Group Life Insurance".

CROSS REFERENCES

This section is referred to in 38 USCS § 777.

RESEARCH GUIDE

Am Jur:
44 Am Jur 2d, Insurance §§ 2087 et seq.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 91-3436
Non-Argument Calendar

D. C. Docket No. 91-18-CIV-T-17C

JUDY A. SANTMYER,

Plaintiff/Cross-Claimant-Appellee.

versus

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant/Cross-Claimant,

SANDRA L. SANTMYER,

Defendant/Cross-Defendant-Appellant.

Appeal from the United States District Court
For the Middle District of Florida

(March 17, 1992)

Before TJOFLAT, Chief Judge, HATCHETT and BIRCH, Circuit Judges. HATCHETT, Circuit Judge:

We affirm the district court's ruling that a serviceman successfully changed the beneficiary of his service life insurance policy although he executed the wrong form.

BACKGROUND

In December, 1984, Lt. (jg) Richard D. Santmyer, a member of the U.S. Coast Gaurd Reserve, filed a VA form 29-8286 designating his wife, Sandra Santmyer, as principal beneficiary of his Serviceman's Group Life Insurance (SGLI) policy. Sub-

sequently, Richard and Sandra were granted a divorce, and in August, 1985, Richard married Judy Santmyer. The uncontroverted evidence shows that Richard intended to designate Judy as the principal beneficiary of his SGLI policy.

In August, 1988, Richard completed a new Coast Guard "Record of Emergency Data" (RED) form. The old RED form designated Sandra Santmyer as beneficiary for unpaid pay and allowance, and as the person to receive Richard's allotment of pay in the event he was missing. The new form designated Judy as beneficiary and recipient for these funds. Although the form clearly stated on the reverse side that it did not designate SGLI beneficiaries, and that SGLI "beneficiary designations . . . remain in effect until canceled or changed by completion of a new V.A. Form 29-8286," Richard and the Coast Guard clerk who filled out the form believed that it effectively designated Judy as the beneficiary of the SGLI policy.

In August, 1989, the Coast Guard transferred Richard Santmyer to a new reserve unit. At the new unit, Richard reviewed the Record of Emergency Data form with the unit clerk. At the clerk's request, Richard confirmed that he wanted Judy to receive his SGLI benefits. The clerk stated that Judy was already designated to receive those benefits on the RED form.

In May, 1990, Richard told the administrative officer of his reserve unit, Lt. Janet B. Gammon, that he "wanted to make sure" that Judy would receive his SGLI benefits. Two months later, upon hearing that Richard was in the hospital, Lt. Gammon contacted Coast Guard district headquarters in Miami to inquire about Richard's SGLI policy. Chief Petty Officer Bowles informed Lt. Gammon that a current RED form designated Judy as the beneficiary of Richard's SGLI policy. Richard died soon thereafter.

On November 6, 1990, R.R. Harbor, the official in charge of the Coast Guard's retirement and death benefits branch, wrote to Judy informing her that "records at Coast Guard Headquarters show that your husband designated you to receive the Serviceman's Group Life Insurance." A Report of Casualty, also dated November 6, 1990, stated, "Designation of Beneficiary: YES — Judy Arlene Santmyer."

On December 20, 1990, Harbor wrote Judy informing her that the RED form on file with the Coast Guard was not effective

to change beneficiary designations for the SGLI policy because changes in beneficiary designations were to be made only by executing a new VA Form 29-8286. Because the only VA Form 29-8286 on file with the Coast Guard designated Sandra Santmyer as beneficiary of the SGLI policy, the insurance benefits had to be paid to her.

On January 8, 1991, Judy filed an action against Sandra Santmyer and the insurer, Prudential Insurance Company of America (Prudential). After Prudential deposited the policy proceeds into the court registry, the district court dismissed Prudential pursuant to an interpleader judgment. The parties filed motions for judgment on the pleadings with affidavits. The district court treated these as cross-motions for summary judgment and entered judgment for Judy Santmyer. Sandra appealed.

ISSUE

Whether the trial court erred in holding that Richard Santmyer designated Judy Santmyer to receive his SGLI benefits.

DISCUSSION

Sandra contends that the RED form was ineffective to designate Judy as the beneficiary of Richard's SGLI policy. The form explicitly states that it does not designate SGLI beneficiaries, and that a beneficiary designation may be changed only by completing a new VA Form 29-8286. Accordingly, Sandra argues, the Coast Guard never received effective written notice that Richard intended to designate Judy as beneficiary of his SGLI policy. Therefore, Sandra remained the only beneficiary designated on the proper form, and she was entitled to the funds.

The SGLI program affords first priority to the beneficiary whom the insured has "designated by a writing received prior to death." 38 U.S.C. § 770. Under the implementing regulations, "any designation or change of beneficiary ... will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service." 38 C.F.R. § 9.16(d). Courts must strictly construe the requirement that the service branch receive the designation in writing, prior to the death of the insured. *Lanier v. Traub,* 934 F.2d 287, 289 (11th Cir. 1991); *Coomer v. United States,* 471 F.2d 1, 5-6 (5th Cir. 1973).

We agree with the district court that Richard Santmyer satisfied the applicable requirements for changing his SGLI beneficiary. When Richard designated Judy as the beneficiary of his pay and allowances on the RED form, Coast Guard officials understood that he was designating her to receive his SGLI benefits. The Coast Guard clearly believed that it had received written notice of the change in beneficiaries. The chief of the relevant division wrote to Judy stating, "the records" at Coast Guard Headquarters showed that Richard designated her to receive his SGLI benefits. The RED form was a writing; Richard signed it; and the Coast Guard knew that it was intended to designate Judy as the beneficiary of Richard's SGLI policy. Thus, the RED form was effective to designate Judy as the beneficiary under the applicable statute and regulations.

This court must give "paramount consideration" to Richard's intent in designating a beneficiary, so long as the statutory requirements are met. *Prudential Ins. Co. of America v. Smith,* 762 F.2d 476, 480 (5th Cir. 1985). While the armed forces may require a specific form for designation of SGLI beneficiaries, the statute and implementing regulations do not. *See Prudential Ins. Co. of America v. Smith,* 762 F.2d at 481; *Prudential Ins. Co. of America v. King,* 453 F.2d 925, 929-30 (5th Cir. 1971). A change of beneficiary is effective as long as it is in writing, signed by the insured, and received by the service branch prior to death. The Coast Guard received the RED form signed by Richard before his death, and it knew that the form was intended to designate Judy as the sole beneficiary of Richard's SGLI policy. Accordingly, Judy is entitled to the benefits of that policy.

CONCLUSION

The judgment of the district court is affirmed.

AFFIRMED

THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 91-3436

JUDY SANTMEYER,

Plaintiff/Cross-Claimant-Appellee,

versus,

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant/Cross-Claimant,

SANDRA L. SANTMEYER,
Defendant/Cross-Defendant-Appellant.

On Appeal from the United States District Court for the MIDDLE DISTRICT OF FLORIDA

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion March 17, 1992, 11th Cir., 19____, _____F.2d_____).

Before: TJOFLAT, Chief Judge, HATCHETT and BIRCH, Circuit Judges.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular

active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

ORD-42
(9/90)

APPENDIX C

Judy A. SANTMYER, Plaintiff,

v.

The PRUDENTIAL INSURANCE COMPANY OF AMERICA, et al., Defendants.

No. 91-18-CIV-T-17(C).

United States District Court,
M.D. Florida,
Tampa Division.

April 8, 1991.

Current wife of deceased member of Coast Guard Ready Reserve sued life in-

> *Strickland,* 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975), *reh'g denied,* 421 U.S. 921, 95 S.Ct. 1589, 43 L.Ed.2d 790 (1975) (Actions taken by school officials in good faith fulfillment of their responsibilities and within the bounds of reason under all the circumstances are covered by good faith immunity.).

surance company and member's former wife for proceeds from life insurance policy issued to member under Servicemen's Group Life Insurance Program. Former wife moved for judgment on pleadings or summary judgment, and plaintiff cross-moved for summary judgment. The District Court, Kovachevich, J., held that failure of member to change beneficiary of life policy on proper Veteran's Administration form did not defeat clear intent of member to make his current wife beneficiary of policy inasmuch as member made written designation on form which he was directed to complete and which was received by the Armed Forces branch prior to the member's demise.

Plaintiff's motion granted; defendant's motions denied.

Armed Services 84

Failure of member of Coast Guard Ready Reserve to make change in beneficiary of life policy on proper veterans administration form was technicality which did not defeat clear intent

and desire of member to make his current wife beneficiary, where member made a designation in writing on form in which he was directed to complete and which was received by Armed Forces branch prior to member's demise. 38 U.S.C.A. §§ 701 et seq., 770.

Richard M. Sebek, Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Tampa, Fla., for plaintiff.

John Raymond Bush, Bush, Ross, Gardner, Warren & Rudy, Charles William Pittman, MacFarlane, Ferguson, Allison & Kelly, Tampa, Fla., for defendants.

ORDER GRANTING SUMMARY JUDGMENT

KOVACHEVICH, District Judge.

The cause is before the Court on Defendant Sandra L. Santmyer's motion for judgment on the pleadings, alternatively for summary judgment, filed January 30, 1991; response thereto, filed February 12, 1991; Plaintiff's cross-motion for summary judgment, filed February 12, 1991; and response, filed February 20, 1991.

This circuit clearly holds that summary judgment should only be entered when the moving party has sustained its burden of showing the absence of a genuine issue as to any material fact when all the evidence is viewed in the light most favorable to the nonmoving party. *Sweat v. Miller Brewing Co.*, 708 F.2d 655 (11th Cir.1988). All doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. *Hayden v. First National Bank of Mt. Pleasant,* 595 F.2d 994, 996-97 (5th Cir.1979), quoting *Gross v. Southern Railroad Co.*, 414 F.2d 292 (5th Cir.1969). Factual disputes preclude summary judgment.

The Supreme Court of the United States held in *Celotez Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986):

> In our view the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to establish the existence of an element essential to that party's

case, and on which that party will bear the burden of proof at trial. Id. at 322, 106 S.Ct. at 2552, 91 L.Ed.2d at 273.

The Court also said, "Rule 56(e) therefore requires that nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing there is a genuine issue for trial.' " *Celotex Corp.*, at p. 324, 106 S.Ct. at p. 2553, 91 L.Ed.2d at p. 274.

On January 8, 1991, the complaint was filed naming as defendants The Prudential Insurance Company of America (Prudential) and Sandra L. Santmyer. A final judgment of interpleader as to Prudential was entered on March 14, 1991, leaving only Sandra L. Santmyer as a defendant herein. The proceeds of the insurance policy in dispute have been deposited in the registry of the court.

The complaint makes the following allegations which are relevant to resolution of the pending motions.

1. On or about August 17, 1990, Lieutenant (jg) Richard D. Santmyer, U.S. Coast Guard Reserve, died. Plaintiff is the widow of Richard D. Santmyer.

2. Defendant Sandra L. Santmyer is the ex-wife of Richard D. Santmyer.

3. At the time of his death, Richard Santmyer was a member of the Coast Guard Ready Reserve and was covered by a Serviceman's Group life insurance policy issued by Prudential, Policy Number G-32000, which was to pay $50,000.00 to his beneficiary.

4. Richard Santmyer was married to the defendant until their divorce on or about August 13, 1985. At one time Sandra Santmyer was the designated beneficiary of the insurance policy.

5. Following his marriage to Plaintiff, until the time of his death, Richard Santmyer intended Plaintiff to be the designated beneficiary of the policy.

Plaintiff submits the following additional "facts" in her response and cross-motion for summary judgment:

1. Following his remarriage, Richard Santmyer intended that Plaintiff be the beneficiary of the insurance policy and communicated this intent to Plaintiff. (Aff. of Judy Santmyer).

2. The intent to change beneficiaries was communicated to the Coast Guard as follows: After his commissioning as ensign in the reserves, Richard Santmyer reported to the Coast Guard Reserve Unit Station, St. Petersburg, Florida, on or about August 28, 1988. At that time he filled out a Coast Guard form 4113 "Record of Emergency Data" form. (Ex. C to Docket 10). On that date he was processed into the new unit by Yeoman Third Class Teresa Morgado. Morgado completed the form and removed the CG-4113 form containing Sandra Santmyer's name from the file, replacing it with the newly completed form. Pursuant to Richard Santmyer's direction, Morgado typed Judy Santmyer's name in blocks 13 and 14 (beneficiary for unpaid pay and allowance and person to receive allotment of pay if missing or unable to transmit funds). (Aff. Teresa Morgado).

3. Richard Santmyer was transferred to the Coast Guard Reserve Detachment Clearwater. Richard Santmyer informed Yeoman Third Class Gail Hockman, administrative personnel, that he wanted Plaintiff to be the beneficiary of the insurance policy and Hockman informed him she was "because Judy was already so designated on the form." (Aff. Gail Hockman).

4. In May 1990, Richard Santmyer contacted Lieutenant Janet Gammon, a Coast Guard Reserve officer who was the administrative officer of his unit. He advised Gammon that he wanted all of his benefits, including the insurance policy, to go to Plaintiff and requested she verify that it would occur. In August 1990, Gammon was advised Richard Santmyer was in the hospital. She contacted Coast Guard District Headquarters in Miami, Florida and spoke with representatives of the administrative branch. Gammon was advised, after review of his file, including the emergency data form, that Plaintiff was the designated beneficiary. (Aff. Janet Gammon).

5. Richard Santmyer advised co-worker, Van E. Day, of his intent to leave everything to Plaintiff and that he had signed the necessary forms to designate her as beneficiary of the insurance policy. (Aff. Van E. Day).

Plaintiff seeks a declaratory judgment that she is entitled to the proceeds of insurance policy number G-3200.

Defendant stipulates that Plaintiff, who married Richard Santmyer after their divorce, would testify that prior to his death Richard Santmyer stated his intention that Plaintiff be the designated beneficiary of the life insurance policy. Defendant does not counter any of the specific facts establisted by Plaintiff by coming forward with "deposits, answers to interrogatories. . ." to show that a genuine issue of material fact exists requiring denial of the motion for summary judgment.

Judy Santmyer was notified of her entitlement to the life insurance proceeds, letter of November 6, 1990. (Ex. I to Docket 10). On December 10, 1990, she was informed that she was not the beneficiary because the designation had to be made by executing VA Form 29-8286. (Ex. J to Docket 10).

On December 20, 1990, Sandra Santmyer was notified by the U.S. Coast Guard that the records at Coast Guard Headquarters showed that her former husband designated her as beneficiary and sent her a claim form to complete. (Ex. C to Docket 3). Thereafter, on January 15, 1991, she received a letter from the Office of Servicemen's Group Life Insurance stating that the insured's current wife was notified in error that she was the beneficiary of the insurance policy and that subsequently she was informed of the error. (Ex. A to Docket 3).

Richard Santmyer completed a VA Form 29-8286 designating Sandra Santmyer as principal beneficiary on December 4, 1984. (Ex. A to Docket 9). No further VA Form 29-8286 has been introduced by either party and the assumption is that Richard Santmyer never completed any but the December 4, 1984, form number 29-8206.

Motion for Judgement on the Pleadings

Rule 12(c), Fed.R.Civ.P., provides that after the pleadings are closed any party may move for judgment on the pleadings; however, if matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment. Both parties have submitted matters, including affidavits, which go beyond the pleadings, complaint, answers, counterclaim and cross-claim. Pursuant to Rule 12(c), the Court will consider the matters herein only pursuant to Rule 56, Fed.R.Civ.P., as motions for summary judgment.

MOTIONS FOR SUMMARY JUDGMENT

The Court is satisfied that entry of summary judgment is appropriate in this cause. The "facts" are not in dispute; the disputes center around the application of legal standards on the facts presented by the parties. The Court finds that Plaintiff Judy Santmyer has sustained her burden of showing the absence of any genuine issue of material fact. The Court is satisfied that for the following reasons Plaintiff's motion for summary judgment should be granted.

The Servicemen's Group Life Insurance (SGLI) program was created by 38 U.S.C. §§ 701, *et seq.* Under consideration is § 770, as implemented by regulations, which read, in relevant part:

> § 770—Any amount of insurance . . . shall be paid . . . in the following order of preference:
>
> First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance . . .
>
> 38 C.F.R. § 9.16(d)—Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service. . .

Various courts have concluded that, to prevent the private insurance carriers from facing undue administrative burdens, Congress intended that the beneficiary designation provisions of the SGLI be strictly construed. *Stribling v. United States,* 419 F.2d 1350, 1354 (8th Cir.1969) (where the purported successive designation, while in writing, was not received by the armed service of deceased prior to his death); *Coomer v. United States,* 471 F.2d 1 (5th Cir.1973).

In this case, Plaintiff asserts that the requirements have been met and that she is entitled to the insurance proceeds. The statute and the relevant portion of the Code of Federal Regulations requires that the designation be in writing and be received by the armed force prior to the death of the insured. The Court agrees that Plaintiff has established these requirements and Defendant has failed to raise any genuine issue of material fact which would defeat Plaintiff's motion.

The facts evidence a clear intent on the part of Richard Santmyer to designate Plaintiff as the beneficiary of the insurance policy in question: his discussions with his wife, the Coast Guard personnel, and his co-workers. (Exs. to Docket 10). In this case there is clearly a writing which was communicated to the armed force branch prior to Richard Santmyer's demise. Defendant claims that since the writing in question was not filed on a specific VA form the Court cannot find the requirements satisfied and award the insurance benefits to Richard Santmyer's widow to whom he clearly intended the benefits to accrue. The Court cannot agree.

In *Prudential Ins. Co. of America v. Smith,* 762 F.2d 476 (5th Cir.1985), the deceased filed three (3) forms with the military which "unmistakably" showed his intent for his second wife to be the beneficiary of the SGLI policy, including the "Record of Emergency Data" which is the form in question in this case. The circuit said:

> The statute [38 U.S.C. § 770(a)] thus regarded the serviceman's intended designation of beneficiary as the paramount consideration, provided that the designation was received by the military authorities prior to the serviceman's death. *Id.*, at 480.
>
> As we interpret *Stribling's* holding, it is only that the writing requirement of the applicable statute and regulation restricts the scope of relevant proof in SGLI beneficiary contests to signed writings received before the death of the soldier-insured. *Indeed, since Stribling, we have recognized that writings other than the SGLI Election form, if received before death, may be relevant for the purpose of determining a deceased soldier's intended beneficiary. Id.*, at 481. (emphasis added)

In a closer case than the instant case, a United States District Judge of this circuit enforced the intent of the deceased. *Lanier v. Traub,* 734 F.Supp. 463 (S.D.Fla.1990). In that case, the serviceman, on November 24, 1987, executed a VA Form 29-8286 designating the beneficiaries to be "by law." On the same date he executed a "Record of Emergency Data" form wherein he designated his mother and stepfather as co-beneficiaries of any unpaid pay or death gratuity pay. The judge stated:

> Despite Defendant's understandable penchant for restricting the analysis to the four corner of the Group Serviceman's Group Life Insurance Election form, the Court cannot ignore the significance of a seemingly contradictory document, executed the very same day...
>
> [D]ecedent expressed in his "Form 93" (executed at the same time as the Insurance Election form) that Gene Lanier and Mary C. Lanier were to be 50% co-beneficiaries ... To refuse to acknowledge such a plain expression of decedent's intent would allow decedent's clearly articulated "will" to be trumped by formulaic technicality. *Id.*, at 464-465.

This case is ever so much clearer than the *Lanier* case. Plaintiff has established that the deceased attempted in every way he was aware of to evidence his intent that she become his designated beneficiary to the insurance policy. He went to his administrative offices and filled out every form which he was directed to complete. He and the administrative offices of the Coast Guard were satisfied that his intentions had been implemented. The Court cannot allow the technicality of an improper form number defeat the clear intent and desire of Richard Santmyer to have his wife Judy Santmyer receive the benefits of his SGLI policy. Accordingly, and upon due consideration, it is

ORDERED that Plaintiff, Judy A. Santmyer's motion for summary judgment be granted; all other motions be denied, and Plaintiff shall, within five (5) days of this order, submit a proposed order of final judgment for this Court's review.

DONE and ORDERED.

APPENDIX D

OFFICE OF SERVICEMEN'S GROUP LIFE INSURANCE
213 WASHINGTON STREET, NEWARK, NEW JERSEY 07102-2999

January 15, 1991

Sandra L. Santmyer
405 Bonnie View Dr.
Valrico FL 33594

Soc. Sec. No.: 263-88-4399
In Re: Santmyer, Richard D.

Amount of Insurance: $50,000

Dear Sandra Santmyer:

This is to acknowledge receipt of the Claim Form submitted.

The insured's current wife was notified in error that she was the beneficiary of the insured's Servicemen's Group Life Insurance proceeds. They have now informed her of their mistake, and that someone other than her was named beneficiary.

We must allow, Mrs. Judy Santmyer ample time to take legal action against us.

You may be assured that this matter is receiving our attention and we will write to you again in the near future.

Thank you for your cooperation in this matter.

If you have any questions, please call me between 8 a.m. and 3 p.m. EST.

Sincerely,

Peggy Freeman

Peggy Freeman
Claim Approver
(201) 802-3944

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-4113 (Rev. 9-83)

APPENDIX E
RECORD OF EMERGENCY DATA

07-82481

SHIP OR STATION
U.S. COAST GUARD RESERVE STATION ST. PETERSBURG, FL

1. SELECTIVE SERVICE BOARD (Enter number, location and date of first entry into Armed Services)	2. PRIOR MILITARY SERVICE (Check)	3. FORMER SERVICE NUMBERS AND BRANCH OF SERVICE	
LOCAL BOARD #177 51 S.W. First Ave., RM 216 MIAMI, FL 33130(MAY65-USCG)	[X] YES [ ] NO	USCG 356-474	
		4. DATE OF BIRTH 24MAY 46	5. RELIGION PROTESTANT

Indicate by "X" in block opposite name, person(s) listed below who are NOT to be notified due to ill health. Include Zip Code in address.

6.	WIFE OR HUSBAND (If none, or deceased, so state) JUDY ARLENE SANTMYER	6a. ADDRESS AND TELEPHONE NUMBER 5210 LLOYD ST. HOME: (813) 626-3014 SEFFNER, FL 33584 WORK: (813) 225-5729				
7.	NAMES OF CHILDREN (Will be notified if no spouse survives or if children of other than present spouse)	7a. ADDRESS AND TELEPHONE NUMBER	MARRIED	SINGLE	SEX	BIRTHDATE
	SCOTT R. SANTMYER	P.O. BOX 262126, Tampa, FL (813)654-3774		X	M	71FEB11
	TRACI WILLINGHAM (SANTMYER)	603 STONE DR., BRANDON, FL (813)889-0936	X		F	67JUL18
8.	FATHER RAYMOND EUGENE SANTMYER	8a. ADDRESS AND TELEPHONE NUMBER 3225 ALCAZAR DR. LILBURN, GA 30247 (404)972-7165				
9.	MOTHER BERTHA ELIZABETH SANTMYER	9a. ADDRESS AND TELEPHONE NUMBER SAME AS 8a.				
10.	ADULT NEXT OF KIN NOT NAMED IN ANY OTHER ITEM PHILIP WAYNE SANTMYER	10a. ADDRESS AND TELEPHONE NUMBER 678 OLD HICKORY LANE LILBURN, GA 30247 (404) 925-8661				RELATIONSHIP BROTHER
11.	ALL PERSONS RECEIVING MORE THAN 50% OF THEIR SUPPORT FROM ME (Other than wife or children under 21) NONE	11a. ADDRESS AND TELEPHONE NUMBER			BIRTH DATE	RELATIONSHIP

DESIGNATIONS *(Include zip code in all addresses)*

		NAME	ADDRESS	RELATIONSHIP
12. BENEFICIARY FOR GRATUITY PAY IN EVENT THERE IS NO SURVIVING SPOUSE OR ELIGIBLE CHILDREN (Name parents or brothers or sisters only and indicate principal and contingent beneficiary) (10 USC, Section 1475-1480)		NAME (Principal Beneficiary) RAYMOND EUGENE SANTMYER	ADDRESS SAME AS 8a.	RELATIONSHIP FATHER
		NAME (Contingent Beneficiary) BERTHA ELIZABETH SANTMYER	ADDRESS SAME AS 8a.	RELATIONSHIP MOTHER
13. BENEFICIARY OR BENEFICIARIES FOR UNPAID PAY AND ALLOWANCE (10 USC Section 2771) (Percent of shares must total 100%)	100 %	NAME JUDY ARLENE SANTMYER	ADDRESS SAME AS 6a.	RELATIONSHIP WIFE
	%	NAME	ADDRESS	RELATIONSHIP
14. PERSON TO RECEIVE ALLOTMENT OF PAY IF MISSING OR UNABLE TO TRANSMIT FUNDS	% OF PAY EACH MO. 100	NAME JUDY A. SANTMYER	ADDRESS SAME AS 6a.	RELATIONSHIP WIFE

15. INSURANCE POLICIES IN FORCE INCLUDING USGLI AND NSLI (Agencies to be notified in case of death in Active Service) (SEE REVERSE)

DEC 2 8 1990

BENEFICIARY DESIGNATION

The Record of Emergency Data (CG Form 4113) does not designate SGLI beneficiaries. Such designations are made by executing VA Form 29-8286. Members who do not have a completed VA Form 29-8286 in their record or who have completed it as indicated "By Law" thereon will, upon their death, have their SGLI proceeds paid under the provision of law in the following order: Widow(er), child(ren), parent(s), appointed executor or other next of kin. Beneficiary designations, including "By Law" designations, on VA Form 29-8286 remain in effect until cancelled or changed by completion of a new VA Form 29-8286.

15. INSURANCE POLICIES IN FORCE INCLUDING USGLI AND NSLI *(Agencies to be notified in case of death in Active Service)*
(Check appropriate box)

☐ SGLI $5,000 ☐ SGLI $10,000 ☐ SGLI $15,000 ☐ SGLI $20,000
☐ SGLI $25,000 ☒ SGLI ~~XXXXX~~ 50,000 ☐ SGLI $35,000 ☐ NOT PARTICIPATING

FULL NAME AND ADDRESS OF COMPANY	ADDRESS OF OFFICE RECEIVING PAYMENT OR HOME OFFICE	POLICY NUMBER

16. SURVIVOR BENEFIT PLAN *(check one)* (✓)				DATE WITNESSED AND FORWARDED TO PERSONNEL AND MILITARY PAY CENTER	OPTION	ANNUITY
		YES	☐ ELECTED ☐ CHANGED			
		NO	☐ REVOKED			

ANNUAL CERTIFICATION

Item 6 through 16 Certified Correct.	19 89 APR 01	Members Signature	Richard Dean Santmyer
Item 6 through 16 Certified Correct.	19 89 SEP 25	Members Signature	Richard Dean Santmyer
Item 6 through 16 Certified Correct.	19 ___ APR 01	Members Signature	
Item 6 through 16 Certified Correct.	19 ___ APR 01	Members Signature	
Item 6 through 16 Certified Correct.	19 ___ APR 01	Members Signature	
Item 6 through 16 Certified Correct.	19 ___ APR 01	Members Signature	

SIGNATURE OF DESIGNATOR	SIGNATURE AND TITLE OF WITNESS		DATE SIGNED
Richard Dean Santmyer	Teresa Morgado YN3 TERESA MORGADO		88AUG28
NAME OF DESIGNATOR *(Last, first, middle)*	PRESENT SERVICE NO.	GRADE/RATE	SOCIAL SECURITY NUMBER
SANTMYER, RICHARD DEAN		ENS	263 88 4399

PRIVACY ACT STATEMENT

In accordance with 5 USC 552a(e)(3), the following information is provided to you when supplying personal information to the U. S. Coast Guard.

1. AUTHORITY which authorizes the solicitation of the information: 10 USC 1475-1480. 10 USC 2771.

2. PRINCIPAL PURPOSE(S) for which information is intended to be used: (1) Person(s) to be notified in case of emergency or death. (2) Person(s) to receive death gratuity. (3) Person(s) to receive unpaid pay and allowances *(arrears in pay)*. (4) Person(s) to receive allotment of pay if missing or unable to transmit funds. (5) Commercial insurance companies to be notified in case of death. (6) U.S. Government and National Service Life Insurance in force. (7) Servicemen's Group Life Insurance participation.

3. ROUTINE USES which may be made of the information: (1) To provde various agencies with information as to the person or persons eligible to receive benefits as the result of a member's death. (2) To provide immediate current information for casualty in a timely manner or delay or failure to pay certain death bentfits.

4. DISCLOSURE of the information is voluntary, but failure to provide this information may result in the inability to notify the next of kin of a casualty in a timely manner or delay or failure to pay certain death benefits.

APPENDIX F

(PLEASE READ INSTRUCTIONS ON THE REVERSE SIDE BEFORE COMPLETING AND SUBMITTING THIS FORM)

SERVICEMEN'S GROUP LIFE INSURANCE ELECTION

IMPORTANT – This form is for use by ACTIVE DUTY AND RESERVE MEMBERS. This form does not apply to and cannot be used for any other Government life insurance.

USE THIS FORM FOR: 1. REDUCING OR REFUSING INSURANCE

INSURANCE SHOULD BE PAID

(Do not make changes, corrections or changes. Complete a new form)

LAST NAME - FIRST NAME - MIDDLE NAME	RANK, TITLE OR GRADE	SERVICE OR SOCIAL SECURITY NO.
SANDMYER, RICHARD DEAN	E-1	263 88 4399

BRANCH OF SERVICE (Do not abbreviate)	CURRENT DUTY LOCATION
U.S. COAST GUARD RESERVE	CGRU MED TAMPA, FL

1. REDUCING OR REFUSING INSURANCE

By law you are automatically insured for $35,000. If you do not want $35,000 insurance write below in your own handwriting "I want only $30,000, $25,000, $20,000, $15,000, $10,000 or $5,000 insurance." Any "I want" insurance you prefer. Reduced or refused insurance can be restored only by written request with proof of good health and compliance with other requirements.

BE SURE TO COMPLETE PART 2

2. BENEFICIARY(IES) AND PAYMENT TO BENEFICIARY(IES) (Read instructions C and D on reverse)

IMPORTANT – You must write in the spaces below:
(1) The names and other information for persons you want to receive your insurance, or —
(2) "By Law" in your own handwriting if you wish the law to apply (as explained on reverse).

Insurance is paid in a lump sum or 36 equal monthly installments at the option of the beneficiary(ies). If you insert "36" under "Payments to Beneficiary," payment will be made only in 36 equal monthly installments.

I DESIGNATE THE FOLLOWING BENEFICIARIES TO RECEIVE PAYMENT OF MY INSURANCE PROCEEDS AS SHOWN BELOW:

COMPLETE NAME AND ADDRESS OF EACH BENEFICIARY (If married woman, give her own first and middle names and husband's last name)	RELATIONSHIP TO INSURED	SHARES TO BE PAID TO EACH BENEFICIARY (Use fractions such as 1/2, 2/3, 3/4, or "ALL")	PAYMENTS TO BENEFICIARY (Insert "36" if only monthly payments desired. See D on reverse)
PRINCIPAL (First) SANDRA		ALL	
CONTINGENT (Second - If principal beneficiary dies before me or before completion of installment payments to the principal beneficiary)			
TRACI		1/2	
SCOTT		1/2	

NOTE: If more than one principal beneficiary is named, the share of any such beneficiary who dies before me shall be distributed equally among the surviving principal beneficiaries. If there is no surviving principal beneficiary the proceeds shall be distributed equally to the surviving contingent beneficiaries. This Designation of Beneficiary shall be void if none of the designated beneficiaries is living at my death. If after completion of this form my insurance is increased, this beneficiary designation shall apply to the full amount in force unless a new designation is made.

I UNDERSTAND that this form cancels any prior beneficiary or payment instructions and that unless I have named the beneficiary(ies) above, my insurance will be paid under the "Provisions of the Law" as explained on the reverse of this form.

I UNDERSTAND that I cannot have combined SGLI and VGLI coverage at the same time for more than $35,000.

SIGN HERE IN INK: RICHARD DEAN SANDMYER (Signature of insurer) (Do not print)

DATE COMPLETED: 04DEC84

WITNESSED AND RECEIVED BY:	RANK, TITLE OR GRADE	ORGANIZATION	DATE RECEIVED
C.P. MCLAUGHLIN III	EMC, USCG, OIC	CG RUTTOFF TAMPA, FL	04DEC84

VA FORM OCT 1981 29-8286 SUPERSEDES VA FORM 29-8286, JUL 1974, WHICH WILL NOT BE USED

FOR THE UNIFORMED SERVICES AND RESERVE USE

DEC 31 19

FOR OSGLI USE ONLY

CLAIM FOR DEATH BENEFITS

(Servicemen's Group Life Insurance)
(Veterans' Group Life Insurance)

RETURN COMPLETED FORM TO:
OFFICE OF SERVICEMEN'S GROUP LIFE INSURANCE
213 Washington Street
Newark, New Jersey 07102

NOTE: THIS FORM IS NOT TO BE USED FOR NATIONAL SERVICE LIFE INSURANCE (NSLI) Policy Numbers Prefixed by V, H, RH, RS, W, J, JR and JS or UNITED STATES GOVERNMENT LIFE INSURANCE (USGLI) Policy Numbers Prefixed by K

1. NAME OF DECEASED (First, middle, last)	2. SOCIAL SECURITY NO.	3. DATE OF DEATH
Richard Dean Santmyer	263-88-4399	8/17/90

4. BRANCH OF SERVICE	5. DUTY STATUS ON DATE OF DEATH (If known)	6. IF DISCHARGED OR SEPARATED, GIVE DATE (If known) (Month, day, year)
U.S. Coast Guard (Reserve-Inactive)	☐ ACTIVE DUTY ☒ DISCHARGED OR SEPARATED ☐ DRILLING RESERVIST ☐ INDIVIDUAL READY RESERVIST	Unknown

PLEASE READ THE IMPORTANT INFORMATION AND INSTRUCTIONS ON REVERSE BEFORE COMPLETING.

PART I – INFORMATION CONCERNING CLAIMANT

7. NAME (First, middle, last)	8. RELATIONSHIP TO DECEASED	9. DATE OF BIRTH (Month, day, year)	10. SOCIAL SECURITY NUMBER
MR. MRS. MISS MS. Sandra Lynn Santmyer	Former Wife	12/26/46	267-86-6520

NOTE – Complete Items 11A through 14C if you are the widow or widower of deceased.

11A. DATE OF MARRIAGE (Mo., day, yr.)	11B. PLACE OF MARRIAGE (City and State)	12. DID MARRIAGE CONTINUE UNTIL DATE OF DEATH?
		☐ YES ☐ NO

13A. DID DECEASED HAVE ANY PREVIOUS MARRIAGES?	13B. PREVIOUS MARRIAGE TERMINATED BY	13C. DATE PREVIOUS MARRIAGE TERMINATED (If divorced within last 5 years attach copy of the divorce decree)
☐ YES ☐ NO (If "Yes," complete 13B and 13C)	☐ DEATH ☐ DIVORCE	

14A. DID YOU HAVE ANY PREVIOUS MARRIAGES?	14B. PREVIOUS MARRIAGE TERMINATED BY	14C. DATE PREVIOUS MARRIAGE TERMINATED (If divorced within last 5 years attach copy of the divorce decree)
☐ YES ☐ NO (If "Yes," complete 14B and 14C)	☐ DEATH ☐ DIVORCE	

NOTE – If you are not the named beneficiary, widow or widower of the deceased, complete Parts II and III.

PART II – INFORMATION CONCERNING NEXT-OF-KIN OF DECEASED

List below the name, age, relationship, and address of. *(Check appropriate places below)*

(a) Widow or Widower, ☐ None

If none, was insured ever married? ☐ Yes ☐ No If yes, did marriage terminate by ☐ Death Give Date _____ ☐ Divorce Give Date _____

(b) If there is no surviving widow or widower, list all the children of the deceased. Include any adopted child or illegitimate child stating which class it is and list the descendants of any deceased child or children. If none, check here ☐

(c) If there are no children or descendants of children, list the surviving parent or parents.

Is father deceased? ☐ Yes ☐ No Is mother deceased? ☐ Yes ☐ No

(d) If there are no survivors within the degrees indicated in (a) through (c), list below the next of kin who may be capable of inheriting from the deceased *(brothers, sisters, descendants of deceased brothers, sisters, etc.)*.

15A. NAME	15B. AGE	15C. RELATIONSHIP TO DECEASED	15D. ADDRESS

NOTE – Complete Items 16 and 17 ONLY if any of the persons listed above are under age 21.

16. NAME AND ADDRESS OF GUARDIAN FOR ANY MINOR CHILDREN LISTED ABOVE IF ONE HAS BEEN APPOINTED BY THE COURT (Attach copy of appointment paper issued by court)	17. IF A GUARDIAN HAS NOT BEEN APPOINTED, WILL ONE BE APPOINTED?
	☐ YES ☐ NO

PART III - INFORMATION CONCERNING THE ESTATE OF THE DECEASED

18. NAME AND ADDRESS OF EXECUTOR OR ADMINISTRATOR, IF ANY, APPOINTED BY THE COURT TO SETTLE THE ESTATE OF THE DECEASED	19. IF AN EXECUTOR OR ADMINISTRATOR HAS NOT BEEN APPOINTED, WILL ONE BE APPOINTED?
	☐ YES ☐ NO

PART IV - CERTIFICATION BY CLAIMANT

I HEREBY CERTIFY that all statements made in this claim are true to the best of my knowledge, information, and belief, and that no evidence necessary to a settlement of this claim is suppressed or withheld. In the event the insured has not previously elected monthly installments, I request that the Death Benefit be paid in: *(Check one)* ☒ One Sum ☐ 36 Equal Monthly Installments.

20. SIGNATURE OF CLAIMANT (Do not print)	21. ADDRESS (Number and Street, City, State and ZIP Code, Apt. No.)	22. DATE
Sandra K. Santmyer	405 Bonnie View Dr. Valrico Florida 33594	12-27-90

WARNING. - Any intentional false statement in this claim or willful misrepresentation relative thereto is subject to punishment by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001).

SGLV-8283 JAN 1988 SUPERSEDES VA FORM 29-8283, AUG 1980, WHICH WILL NOT BE USED.

IF ADDITIONAL SPACE IS REQUIRED, ATTACH SEPARATE SIGNED SHEETS

Supreme Court, U.S.
FILED
JUL 13 1992
OFFICE OF THE CLERK

No. 91-2013

In The

Supreme Court of the United States

October Term, 1992

SANDRA L. SANTMYER,

Petitioner,

v.

JUDY A. SANTMYER,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

BONITA L. KNEELAND
Counsel of Record

and

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(813) 228-7411
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COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

In accordance with Rule 15.1, Rules of the Supreme Court, the Respondent submits that the Question Presented for Review by Petitioner does not accurately depict the issue before this court because it does not accurately reflect the lower court's holding. The opinion of the Eleventh Circuit does *not* state that the written designation requirement of the Servicemen's Group Life Insurance Act (SGLIA) is inapplicable if a court finds that a serviceman's intent is otherwise than the written designation. The opinion of the court below specifically held that *because* the statutory requirements had been met in this case, by a writing signed by the serviceman, received by his service branch prior to his death, and accepted, understood, and acknowledged by the service branch to represent a written change of his SGLI beneficiary, the court would give paramount consideration to the serviceman's intent. The Respondent, therefore, respectfully submits the following Question Presented which more accurately reflects the lower court's holding:

Whether the United States Court of Appeals for the Eleventh Circuit correctly held that a serviceman had satisfied the applicable statutory and regulatory requirements for changing his SGLI beneficiary from his ex-wife to his present wife by taking into consideration the understanding of both the Coast Guard and the serviceman as to the effect of the incorrect written form used by the Coast Guard and the serviceman to change his SGLI beneficiary.

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RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

The Respondent, Judy A. Santmyer, requests that this court deny the petition for writ of certiorari seeking review of the opinion of the Eleventh Circuit Court of Appeals entered March 17, 1992.

STATUTES AND REGULATIONS INVOLVED[1]

The Servicemen's Group Life Insurance (SGLI) program was created by 38 U.S.C. §§ 701, et seq. Under consideration is section 770 and its implementing regulation which read, in relevant part:

> § 770 – Any amount of insurance . . . shall be paid . . . in the following preference: First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance . . .
>
> 38 C.F.R. § 9.16(d) – Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by

[1] The Petitioner's Brief sets out the specific statutory provision. However, its implementing regulation, on which the Eleventh Circuit also relied, is found only in the District Court's opinion. For this Court's convenience, both are set out here together.

> the insured, and received prior to the death of the insured by his or her uniformed service . . .

District Court opinion, Pet. App. C, A-20.[2]

STATEMENT OF THE CASE

The Respondent, Judy A. Santmyer, cannot accept the Petitioner's Statement of the Case because it also incorporates argument for the Petitioner's position. The Respondent generally adopts the statement of the case and facts set out in the opinion of the court below and includes, in Respondent's Appendix, those documents on which the court relied. Eleventh Circuit opinion, Pet. App. B, A-9 to A-12.

In August, 1988, Richard Santmyer completed a new Coast Guard "Record of Emergency Data" (RED) form designating his present wife Judy as beneficiary for unpaid pay or allowance and as beneficiary of his pay in the event he was missing. Pet. App. E, A-24 to A-25. The former RED had designated his ex-wife Sandra. Although the RED form stated that it did not designate SGLI beneficiaries, which required a new and separate VA form, both Richard and Teresa Morgado, the Coast Guard clerk who filled out the new RED, believed that it effectively designated Judy as Richard's SGLI beneficiary as well. Morgado, in fact, said that she typed the SGLI policy amount of $50,000 on the new RED form to reflect an

[2] All references to the Petitioner's Appendix will be referred to as "Pet. App." All references to the Respondent's Appendix will be referred to as "Resp. App."

increase in those policy benefits. Pet. App. B, A-9 to A-10; Resp. App. A, 1a-2a.

In August, 1989, at Richard's request, Gale Hockman, the unit clerk at his new reserve unit, confirmed to Richard that Judy was designated to receive his SGLI benefits because she was the designated beneficiary on Richard's current RED form. Pet. App. B, A-10; Resp. App. B, 3a-4a. In May, 1990, again at Richard's request and while he lay in the hospital, Janet B. Gammon, the administrative officer of Richard's reserve unit, contacted the Coast Guard district headquarters and again confirmed for Richard that the current RED form designated Judy as Richard's SGLI beneficiary. Richard died shortly thereafter. Pet. App. B, A-10; Resp. App. C, 5a-6a.

On November 6, 1990, the Coast Guard official in charge of death benefits sent a letter to Judy informing her that "records at Coast Guard Headquarters show that your husband designated you to receive the Servicemen's Group Life Insurance." Pet. App. B, A-10; Resp. App. D, 7a-8a. A "Report of Casualty" issued by the Coast Guard on the same date, in referring to SGLI benefits, stated "Designation of beneficiary: Yes – Judy Arlene Santmyer." Pet. App. B, A-10; Resp. App. E, 9a-10a. On December 20, 1990, however, the Coast Guard wrote to Judy telling her that the RED form on file was not effective because the SGLI beneficiary change should have been made on a new VA form and that the old VA form on file designated Sandra as Richard's SGLI beneficiary. Pet. App. B, A-10 to A-11.

Judy sued Sandra and the insurance carrier, Prudential, for the SGLI benefits. Prudential deposited the proceeds into the court registry and was dismissed. The Middle District of Florida granted summary judgment to Judy and Sandra appealed. Pet. App. B, A-11. The Eleventh Circuit Court of Appeals affirmed, finding that "Richard Santmyer satisfied the applicable requirements for changing his SGLI beneficiary." Pet. App. B, A-12.

In so holding, the Eleventh Circuit noted that the statute and its implementing regulation did not require a specific form for designating SGLI beneficiaries, even if the Coast Guard did. Pet. App. B, A-12. The Eleventh Circuit also held that the Coast Guard officials "understood" and "believed" that they had received a written notice of Richard's change of SGLI beneficiary to Judy prior to Richard's death. Pet. App. B, A-12.

The Eleventh Circuit concluded that, based on the Coast Guard's knowledge that the current RED form was intended by Richard to designate Judy as his SGLI beneficiary, "the RED form was effective to designate Judy as the beneficiary under the applicable statute and regulations." Furthermore, the court reasoned that "so long as the statutory requirements are met," it would give paramount consideration to Richard's intent. Pet. App. B, A-12.

REASONS FOR DENYING THE WRIT

POINT I

THE ELEVENTH CIRCUIT CORRECTLY FOUND THAT RICHARD SANTMYER SATISFIED THE CONTROLLING STATUTE AND REGULATION TO EFFECT A CHANGE OF HIS SGLI BENEFITS TO HIS CURRENT WIFE, JUDY, DESPITE HAVING COMPLETED THE INCORRECT COAST GUARD FORM

The Eleventh Circuit obviously recognized that the Coast Guard had simply provided Richard Santmyer with the wrong form, a RED, to change his SGLI beneficiary and that no one had read the section on the RED form which stated that a separate VA form, not a RED, should be used for that purpose. Despite the disclaiming language, the Coast Guard acknowledged to both Richard, and later to Judy, that it considered the current RED to be Richard's written designation of his SGLI beneficiary change. Since the statute and the regulation regarding SGLI benefits accepts *any* "writing," the Eleventh Circuit correctly ruled that the statutory requirements were satisfied.

The Eleventh Circuit did not reject the statute and substitute a criteria of intent by Richard, as argued by Petitioner. To the contrary, the court below focused on the fact that the Coast Guard itself understood and believed that the current RED form was a designation of Richard's change of beneficiary, in writing, signed by Richard and received by the Coast Guard prior to his death. Again and again, even on Richard's deathbed, the Coast Guard officials assured Richard that his current RED represented, to them, a record of an effective change of SGLI benefits to his present wife, Judy.

The crux of the Petitioner's argument is that never, under any circumstances, could the RED constitute the "writing" evidencing a change of beneficiary for SGLI benefits, because the form says otherwise. The Petitioner, however, fails to cite to any caselaw that makes such a broad declaration. In fact, in *Prudential Insurance Company of America v. King*, 453 F.2d 925, 929 (8th Cir. 1971), the court noted that the statute does not specify that any particular form be used, but only requires "a writing" received by the service branch prior to death. *See also Stribling v. United States*, 419 F.2d 1350, 1355 n.12 (8th Cir. 1969). Receipt of the writing by the uniform service occurs when the serviceman hands the writing naming the beneficiary to the person to whom the service had put in charge of receiving and maintaining such designations. *Coomer v. United States*, 471 F.2d 1, 5 (5th Cir. 1973).

In *Stribling*, 419 F.2d at 1350, the court held that a soldier did not effectively change his SGLI policy beneficiary by merely mailing a copy of a change of beneficiary form to his mother. The court noted that the serviceman's actions did not comply with statutory requirement because, although he evidenced an intent to change beneficiaries, "this purported change of beneficiary designation had not come to the attention of either Appellee, the Prudential Insurance Company of America or the United States Army prior to [his] death." *Id.* at 1351. In the case at hand, however, a writing made by Richard to reflect both Richard's and the Coast Guard's understanding that his SGLI beneficiary was changed to his current wife certainly came to the attention of the Coast Guard prior to Richard's death. Both the writing and notice requirements of the statute were satisfied here.

The *Stribling* decision continues to be cited for the proposition that the "notice" (to the service) requirement of the statute will be strictly construed. In *Prudential Insurance Company of America v. Smith*, 762 F.2d 476, 481 (5th Cir. 1985), the Fifth Circuit was called on to examine the strict constructionist doctrine established by the *Stribling* court. The *Smith* court noted that *Stribling* did not hold that any particular writing is required or that some writings, if filed, would not be given effect. *Id.* at 481. Significantly, the *Smith* court also held that *Stribling* did not stand for the proposition that a "simultaneously-filed Record of Emergency Data (RED) form is irrelevant in determining a [serviceman's] intent." *Id.* Instead, in a footnote, the *Smith* court noted that after its decision in *Stribling*, the Eighth Circuit clarified its position, holding that a serviceman's failure to use the proper official form for designating a beneficiary should not override the serviceman's will or intent. *Id.* at n.7 (citing to *Prudential Insurance Company v. King*, 453 F.2d 925, 929 (8th Cir. 1971)).

The evolution of the *King* holding is significant. In *Prudential Insurance Company v. King*, 324 F.Supp. 1236 (W.D. Mo. 1970), *aff'd*, 453 F.2d 925 (8th Cir. 1971), the district court noted that in *Stribling*, the Eighth Circuit had rejected the earlier liberal policy of the courts *only* with regard to the explicit notice requirement of § 770(a), *i.e.*, that the writing be received in the uniform services prior to the serviceman's death. *Stribling*, 419 F.2d at 1352. However, with respect to the *form* of the writing (on a form other than the one designated by the military to be used for such a change), the "liberal policy" still applied. *King*, 324 F.Supp. at 1243.

On appeal, the Eighth Circuit agreed with the district court's reasoning. *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971). Expanding on its earlier holding in *Stribling*, which is oft-quoted for the pronouncement that the SGLI Act, including its writing requirement, be strictly construed, the Eighth Circuit in *King* explained that a serviceman's "failure to use" the official form for designating a beneficiary "certainly . . . should not be a vehicle by which the serviceman's will or intent could be nullified." *Id.* at 929.

Richard Santmyer's use of the RED form to change his SGLI beneficiary to Judy Santmyer – coupled with the Coast Guard's understanding that the RED form represented Richard's written request to change his SGLI beneficiary to his current wife, Judy – satisfied the statutory and regulatory requirements pertaining to SGLI benefits. Since the statute does not require that Richard use the VA form, but requires only that there be a designation by "a writing received prior to death," this criteria had been satisfied by Richard's actions and the Coast Guard's acknowledgment. The record demonstrates that both Richard and the Coast Guard representatives believed that the RED form, despite the initially overlooked disclaiming language contained therein, nevertheless served the purpose of designating Judy as the beneficiary of Richard's SGLI policy.

POINT II

THERE IS NO CONFLICT BETWEEN THE ELEVENTH CIRCUIT'S DECISION AND ANY OTHER DECISION OF A CIRCUIT COURT OF APPEAL OR THIS COURT

The cases cited by the Petitioner to demonstrate conflict are inapplicable. In *Wissner v. Wissner*, 338 U.S. 655 (1950), a widow claimed entitlement to a serviceman's benefits under California community property law. This court held that under federal law, only a serviceman's notice to the service branch by a writing could operate to change a serviceman's beneficiary. In *Ridgeway v. Ridgeway*, 454 U.S. 46 (1981), this court held that a state divorce decree ordering a serviceman to keep a policy in force for his children could not override the controlling provisions of the SGLI Act under which the insured service member may freely designate his beneficiary and alter his choice at any time. *Coomer v. United States*, 471 F.2d 1, 3 (5th Cir. 1973) stands for the proposition that once the service branch receives a writing from a serviceman naming a beneficiary, the fact that the writing is later lost, destroyed, stolen, or misplaced will not nullify the serviceman's choice.

As discussed in Point I, the *Smith*, *King* and *Stribling* decisions all support or are in accord with the Eleventh Circuit's decision. Certainly, the Petitioner has demonstrated no true, acknowledged conflict between any of the decisions cited and the holding of the Eleventh Circuit in this case. There is nothing to support the Petitioner's argument that the SGLI proceeds can belong to no one other than the person designated in writing in the *appropriate* form received by the service branch. The fact that Richard Santmyer used an inappropriate form is

irrelevant in light of the Coast Guard's receipt of a writing by Richard prior to his death which the Coast Guard understood to designate the Respondent, Judy Santmyer, as Richard's SGLI beneficiary.

CONCLUSION

For these reasons, the petition for writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit should be denied.

Respectfully submitted,

BONITA L. KNEELAND
Counsel of Record

and

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(813) 228-7411
Attorneys for Respondent

APPENDIX A

AFFIDAVIT OF WN3, THERESA MORGADO

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, TERESA MORGADO, swear and affirm that the information set forth herein is within my personal knowledge and is true and accurate:

1. I am a Coast Guard reservist holding the rating of Yeoman Third Class (YN3). I have been stationed at Coast Guard Reserve Unit Station St. Petersburg since I enlisted in the reserves in 1986. My job as a Yeoman is to maintain service records and attend to the administrative needs of the reserve unit and its personnel. In the course of my duties, I receive, file and route as necessary, documents completed by reserve unit members.

2. On or about August 28, 1988, I met with then Ensign Richard Santmyer who had must [sic] returned from Yorktown, Virginia following his reserve officer's candidate indoctrination school. Mr. Santmyer had been assigned to Coast Guard Reserve Unit St. Petersburg, and I was processing him into the unit.

3. On that date, Mr. Santmyer and I filled in the Record Of Emergency Data form (CG-4113) which is attached as exhibit A to this Affidavit.

4. At Ensign Santmyer's request, I took out an old Record of Emergency Data form containing his ex-wife's name and replaced it with a new one, which I prepared at Richard Santmyer's request, naming Judy A. Santmyer as

a beneficiary. I saw Richard Santmyer sign that form. I signed it also.

5. Based upon my courses and discussions with Senior Yeomen at the unit, it was my belief that the CG-4113 designated the person who would receive any and all benefits to which a reservist was entitled, including his SGLI benefits. This is so because we were required to check in a block on the form as to the amount of SGLI coverage. In fact, I typed in the policy amount of $50,000.00 on the form to reflect the increase of the policy benefits.

FURTHER AFFIANT SAYETH NOT

/s/ Teresa Morgado
YN3 TERESA MORGADO

Sworn to and subscribed before me by Tersa Morgado, the testator, and by --- and ---, the witnesses, on February 7, 1991.

/s/ Patricia A. Craven
Notary Public

(Notary Seal)

My Commission Expires:

Notary Public State of Florida
My Commission Exp. Feb. 9, 1991
Bonded Thru General Ins. Und.

APPENDIX B

AFFIDAVIT OF GAIL HOCKMAN

STATE OF FLORIDA

COUNTY OF ALAUCHA

I, GAIL HOCKMAN, swear and affirm that the information set forth herein is within my personal knowledge and is true and accurate:

1. I am a Coast Guard reservist holding the rating of Yeoman Third Class (YN3). My job as a Yeoman is to maintain service records and attend to the administrative needs of the reserve unit and its personnel.

2. On or about August of 1989, I was stationed at Coast Guard Reserve Detachment Clearwater, a new unit which was being established. Ensign Richard Santmyer was also attached to that detachment.

3. On or about that date, we were reviewing the Record Of Emergency Data form (CG-4113) in preparation for an inspection. I personally reviewed Mr. Santmyer's form with him, and we discussed it at length. Based upon my course work in the YN rate and discussions with other YN's, it was my belief that the Record Of Emergency Data form designated the beneficiary of the SGLI policy.

4. While discussing the SGLI portion of the form, I asked Mr. Santmyer to verify who he wanted designated as the beneficiary of that policy. Ensign Santmyer told me that he wanted his wife, Judy A. Santmyer, to be the beneficiary of the SGLI policy.

5. I told him that the form already indicated that Judy was named as the beneficiary of that policy. He then signed the form in the required space.

FURTHER AFFIANT SAYETH NOT

/s/ YN3 Gale Hockman
YN3 GAIL HOCKMAN

Sworn to and subscribed before me by Gale Hockman, the testator, and by Robert L. Hockman and Joye Joseph, the witnesses, on Feb. 9, 1991.

/s/ Joye Joseph

Notary Public

(Notary Seal)

My Commission Expires: 11/30/93

APPENDIX C

AFFIDAVIT OF JANET B. GAMMON

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, JANET B. GAMMON, swear and affirm that the information set forth herein is within my personal knowledge and is true and accurate:

1. I was, and still am, the unit administrative officer of Coast Guard reserve station Clearwater since its inception as a detachment, and up to the present time. I hold the rank of Lieutenant (LT). My responsibilities include ensuring that the administrative policies relating to personnel, supply and general correspondence of the Coast Guard are followed at the unit level.

2. On or about May of 1990, I spoke with LT (jg) Richard Santmyer who was also attached to Coast Guard Reserve Unit Station Clearwater. He advised me that he wanted to make sure that Judy Santmyer received all of his Coast Guard benefits, including the Service Group Life Insurance policy.

3. In August of 1990, I heard that LT (jg) Santmyer was in the hospital. I then called district headquarters in Miami, Florida and spoke with Chief Warrant Officer Vern Szlusniak and Chief Petty Officer Bowles. We talked about LT (jg) Santmyer, specifically whether Judy A. Santmyer was the beneficiary of the SGLI policy.

4. I was advised by Chief Petty Officer Bowles that based upon his review of LT (jg) Santmyer's service record, a current Record Of Emergency Data form was on

file and Judy A. Santmyer was the designated beneficiary of the SGLI policy and any other unpaid pay or allowances.

5. I later informed Judy Santmyer of what Chief Bowles told me and asked her to inform Richard.

FURTHER AFFIANT SAYETH NOT

/s/ Janet B. Gammon
JANET B. GAMMON

Sworn to and subscribed before me by Janet B. Gammon, this 8th day of February, 1991.

/s/ Monica L. Daniel
Notary Public

(Notary Seal)

My Commission Expires:

Notary Public State of Florida
My Commission Expires: March 12, 1993
Bonded Thru Agent's Notary Brokerage

APPENDIX D

Commandant United States Coast Guard

U.S. Department
of Transportation

United States
Coast Guard

Washington, D.C. 20593-0001
Staff Symbol
Phone:
G-PS-5
1-800-424-7950

1770
6 November 1990

Mrs. Judy Arlene Santmyer
5210 Lloyd Street
Seffner, FL 33584

Dear Mrs. Santmyer:

Information has been received at Coast Guard Headquarters of the death of your husband, LTJG Richard D. SANTMYER, USCGR, Inactive. I wish to extend to you and your family my sincere sympathy in your loss.

The enclosed forms are forwarded to aid you in filing for Burial Allowance and a Headstone or Marker to which there may be entitlement.

Veterans Administration Form No. 21-534, Applications for Dependency and Indemnity Compensation or Death pension by Surviving Spouse or Child, is also enclosed. Upon completion, this form should be forwarded to your local Veterans Administration office in order for them to adjuidicate your claim for possible entitlement.

The records at Coast Guard Headquarters show that your husband designated you to receive the Servicemen's Group Life Insurance. All matters pertaining to the settlement of this insurance are entirely within the jurisdiction

of the Office of the Servicemen's Group Life Insurance, 212 Washington Street, Newark, NJ 07102. The enclosed form, Claim for Death Benefits, should be sent direct to that office as well as any subsequent inquiries you may have regarding the settlement. A notification of your husband's death has been forwarded to them.

A pre-addressed envelope is enclosed for your convenience.

Sincerely,

/s/ R. R. Harber
R. R. HARBER
Chief, Military Retired
Benefits and Decedent
Affairs Branch
Personnel Services Division
By direction of the
Commandant

Encl: (1) Form No. 21-530
(2) Form No. 21-534
(3) Form No. DD-1330
(4) Form No. 29-8283
(5) Envelope

APPENDIX E

U.S. COAST GUARD

WASHINGTON, D.C. 20591

REPORT OF CASUALTY

REPORT NUMBER AND TYPE FINAL

DATE PREPARED 6 NOV 1990

1. SERVICE IDENTIFICATION (Name, Service Number, Grade or Rate, Component, Branch and Organization)

   SANTMYER, Richard Dean 263 88 4399 LTJG, USCGR, INACTIVE

2. CASUALTY STATUS

   _ BATTLE
   X NONBATTLE

   Died: 17 August 1990

   Cause: Respiratory arrest

   Place: Seffner, FL

3. DATE AND PLACE OF BIRTH, RACE, RELIGIOUS PREFERENCE

   24 May 1946 Salina, KS

4. DATE AND PLACE OF LAST ENTRY ON ACTIVE DUTY IN CURRENT STATUS AND HOME OF RECORD AT TIME

   NOT APPLICABLE

5. SOCIAL SECURITY NUMBER, PAY GRADE, LENGTH OF SERVICE FOR PAY, BASIC PAY, INCENTIVE PAY

   263 88 4399 0-2 over 16 years service $2212.20 per mo.

CHECK IF APPLICABLE

___ CREW ___ NONCREW

6. DUTY STATUS

INACTIVE RESERVE

7. INTERESTED PERSONS (NAME, ADDRESS, RELATIONSHIP)

Judy Arlene Santmyer, widow, 5210 Lloyd Street, Seffner, FL 33584

8. REPORT FOR VA TO FOLLOW

___ YES _x_ NO

9. REPORTING COMMAND AND DATE REPORT RECEIVED IN DEPARTMENT

COGARD RU STATION CLEARWATER FL – 21 August 1990

10. SELECTIVE SERVICE NUMBER, LOCAL BOARD, AND LOCATION (*If unknown, enter date and place of first entry in Armed Services)*

8 177 46 267 #177, Miami, FL

11 May 1965 – San Diego, CA – USCG

11. PRIOR SERVICE DATA

___ YES _x_ NO

12. REMARKS

NO SGLI PREMINUMS [sic] DUE

Servicemen's Group Life Insurance – $50,000.00
Method of pay – $4.00 per month
Designation of beneficiary: YES – Judy Arlene Santmyer (See Attached)

Application for benefits forwarded to: Judy Arlene Santmyer, widow

PAY AND ALLOWWANCES [sic] DISCONTINUED ON DATE OF DEATH

ALLOTMENTS IN EFFECT FOR DEPENDENTS

FOOTNOTES:

1 Illegible

2 Beneficiary for gratuity pay in event there is no surviving wife or child – as designated on record of emergency data.

3 Beneficiary for unpaid pay and allowances – as designated on record of emergency data.

13. DISTRIBUTION

VA
SGLI Newark, NJ

14. SIGNATURE (By direction of the Commandant)

R. R. HARBER
Chief, Military Ret., Benefits & Decedent Affairs Branch

DD
FORM
1 MAR 80
1300